



POLICE DEPARTMENT

February 5, 2010

MEMORANDUM FOR: Police Commissioner

RE: Sergeant Theresa Portalatin  
Tax Registry No. 931899  
Transit Bureau District 12  
Disciplinary Case No. 84354/08

The above-named member of the Department appeared before me on September 2, and October 1, 2009, charged with the following:

1. Said Sergeant Theresa Portalatin, assigned to Transit Bureau District # 12, while off-duty, on or about July 22, 2008, at a location known to this Department, in New York County, did wrongfully and without just cause, cause physical injury to another person, known to this Department.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS  
NYS PENAL LAW SECTION 120.00 (1) ASSAULT IN THE THIRD  
DEGREE

The Department was represented by Michelle Y. Alleyne, Esq.,  
Department Advocate's Office and the Respondent was represented by Anthony DiFiore,  
Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty.

Introduction

[REDACTED], the complainant, did not appear to testify at this Department trial. The Assistant Department (Advocate) informed the Court that she called [REDACTED] three times on the cell phone number she had on file for [REDACTED]. The Advocate also conducted a search of [REDACTED]'s address and the only address that came back was [REDACTED] [REDACTED]. [REDACTED] lived at that address with the Respondent but no longer resides there. Investigators for the Department nevertheless left subpoenas and a letter was sent to that address because a canvass of the area revealed that she had been seen in the area. The Advocate informed the Court that the Department has to proceed with their case using [REDACTED]'s hearsay statements because despite their efforts to locate her they have not been able to secure her appearance for trial.

It should also be noted that during the investigation of this case Department investigator, Sergeant Albert Rivera, tried to interview [REDACTED] but she refused to cooperate. Finally, the Respondent's criminal case was dismissed because the New York County District Attorney's Office could not proceed with their case without the complainant, [REDACTED]

The Department's hearsay case consisted of [REDACTED]'s interview by Department investigators on July 22, 2008, the day of the incident (DX 1). The Respondent also offered a compact disc of [REDACTED]'s 911 call which she made at the time of the incident (RX A).

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department offered the out of court statements made by [REDACTED]

and the tape and transcript were admitted into evidence as Department Exhibit ("DX") 1 and 1A respectively. The Department also called Police Officer Mildred Velez, Sergeant Arthur Beal, Sergeant Albert Rivera and Sergeant Michael Lodato as witnesses.

911 Call of [REDACTED]

[REDACTED] called 911 during the time the incident was taking place on July 22, 2008. [REDACTED] told the 911 operator in sum and substance that she was with a sergeant stating that "she's a cop and she's throwing things at me—my clothes, she's throwing them on my side and she's hitting me a domestic. She's NYPD. She works for District 12. She was my partner." When asked by the operator if she physically touched her? She replied, "Yes." She then told the operator that she is taking my stuff out of the closet and throwing them out in the living room. She states that the Respondent knows she is on the telephone but doesn't think that [REDACTED] is serious. [REDACTED] then gives the Respondent's name and badge number and said that [REDACTED] is also in the apartment and that the Respondent has not threatened her with a gun.

[REDACTED]'s Interview

[REDACTED] was also interviewed on July 22, 2008, by Department investigators of the Patrol Borough Manhattan North Investigations Unit.

[REDACTED] was directed to July 22, 2008, at approximately 3:00 A.M. She stated that she was in her apartment at [REDACTED]. She told investigators that at approximately 2:30 A.M. she woke up and went to wake up the Respondent, who was sleeping on the couch, to tell her to go into the other room to sleep because [REDACTED]

wanted to watch television. When [REDACTED] asked the Respondent "what time the other girls left" she stated that the Respondent "dismissed my question and like turned around and I was like well did you have a good time, she was annoyed and told me to shut up and wanted me to leave her alone and I'm like just go to the room I am not ready for bed right now."

[REDACTED] further told investigators that as the Respondent walked into the room the Respondent said something that [REDACTED] did not remember and [REDACTED] "went after her and I asked, Why is she being so mean, why is she treating me this way and she, she told me you know she said 'shut the fuck up, leave me alone, I don't want to talk to you' and then, and I just, I kept on asking her but why are you doing this and she got up and pushed me, and so I went into the living room and I was crying, but I took her keys cause I know that she was drinking the night before; when we argued rather. So I took the keys and I hid them because she always wants to drive off whenever we get into an argument and she just got upset but she couldn't find her keys. She was looking for them, and I just asked her you know I will leave you alone, I'm not going to say anything just go back to the room, go to sleep and she was just cursing at me, telling me I'm worthless, I'm nothing and I have no one, nobody wants me. And she grabbed me by my hair and pulled me across the room, and I just, I asked her to let go. She, she let me go and she went into the bathroom and I walked back to the door you know to sit in front of the door and then she came back. I don't know how it happened or what was said and I, she slapped me and I remember her slapping me in the face. And I, I just said again I told her please just go to bed, relax you know we'll talk tomorrow you know, if you want me to leave tomorrow I'll leave tomorrow but just relax right now you've been drinking. And

she, she went into the room and took all my stuff out of the closet and threw it in front of the door and she left the clothes on the hanger and she threw it, she was throwing it on top of me so the hangers hit me. And I told her, if you throw something at me one more time I'm gonna call the cops and she threw a couple of things not at me around me and the last time she threw more clothes on my face, on my head and it hit me I just went and called."

[REDACTED] explained that what she meant by the Respondent throwing the clothes on her face was that at the time she was sitting on the floor when the Respondent was throwing the clothes at her.

[REDACTED] stated that she lived in the apartment at [REDACTED] since November 2007 and the Respondent owns the apartment and [REDACTED] pays "maintenance." There were five women at the house that evening, one of them was named [REDACTED] or [REDACTED] and one was named [REDACTED] along with [REDACTED] [REDACTED] and the Respondent and [REDACTED]. She said that two of them were police officers; [REDACTED] and [REDACTED] and [REDACTED] work downtown near the seaport and [REDACTED] works in the Bronx. She said they got together to cook a dinner that evening.

[REDACTED] told investigators that the Respondent, [REDACTED] and [REDACTED] were drinking wine or sangria and added that [REDACTED] was drinking white wine and [REDACTED] was drinking rum and coke. When asked if [REDACTED] thought that they were getting intoxicated she stated "no, but I went to bed before....10:00, 10:30." She said she got up at about 2:30 in the morning because she was having problems sleeping.

[REDACTED] was then asked if she had experienced problems with the Respondent in the past and she said that she had. She stated that the Respondent "mistreats me

constantly" in that when she would want to talk to her to find out what was going on, the Respondent would have an attitude; she would walk away from her or curse her and when she would drink it would be worse. She added that in the past the Respondent had become physical with her. She stated that, when "she drinks and she, she's not an alcoholic but she doesn't know when her limit is and she doesn't drink all the time, social." She stated that she would try to stop her when she's drinking but claims that the Respondent thinks that she was just trying to control her. The incidents that she was referring to occurred when the Respondent was drinking.

She stated that there were two arguments, two fights that lead to the Respondent hitting her. She explained that the Respondent "wasn't drunk, she was not drinking; one of them she wasn't drinking at all." On one occasion, in May 2007, the Respondent was in the bathroom drunk and [REDACTED] got tired of it and told her that she didn't want to deal with this anymore and the Respondent started punching her. She stated that the Respondent's son's father was there and he was a witness to this physical altercation. As a result of that incident she claimed that she was left with two black eyes, but she did not have photographs of her injuries nor did she seek medical treatment for the injuries.

She stated that another incident occurred during Christmas of 2007, when she told the Respondent that she felt neglected by her and that the Respondent didn't want to talk about it, she just wanted [REDACTED] to leave her alone. At one point they were in the car and [REDACTED] turned off the radio because it was on too loud. [REDACTED] stated that the reason the Respondent had turned the music loud was because she did not want to hear [REDACTED] cry and when [REDACTED] went to turn the radio back on the Respondent slapped her hand, stopped the car and grabbed her by her hair. She stated that the Respondent held

her down by her hair and she wouldn't let her go. [REDACTED] grabbed the Respondent by her hair to let her know what she was feeling. She stated that the incident was not reported and that she did not receive medical attention nor did she tell anyone. She first said that she did not tell anyone, then she said, she told a friend but that she did not tell her mother. [REDACTED] claimed that there was another incident when the Respondent was drinking when she was with her friends and [REDACTED] had to pick her up and she was chewing gum and making popping sounds with it and the Respondent wanted her to stop making the sounds. When she told her to stop the Respondent got annoyed and smacked her with the back of her hand. [REDACTED] said that she was not injured.

[REDACTED] further told investigators that there was one other incident during New Year's period of 2008. The Respondent had been working long hours and [REDACTED] was out with the Respondent's sister and decided to stay out so the Respondent could get some sleep. When [REDACTED] came home, the Respondent was angry at her because [REDACTED] just wanted to go to sleep after being out all night. She said that the Respondent wanted to do laundry while [REDACTED] was in bed and one thing lead to another; "she took my clothes again, she took my clothes and threw it in the living room again, and told me that she wants me out and that she didn't want me there." When [REDACTED] told her that she wanted to go to bed, she stated that the Respondent started screaming at her and hitting her and when [REDACTED] tried to call the police the Respondent took the phone and threw it. [REDACTED] was not injured at that time. She believes she told her mother about that incident. When asked by investigators how many times had the Respondent punched her she said, "like two or three times."

The investigator then directed [REDACTED] back to the July 22 incident, and asked her if, at any point she was threatened with a firearm by the Respondent and she replied, "no, never." Nor was she threatened by the Respondent in any way.

[REDACTED] reiterated that after the Respondent continued to throw the clothes at her after telling her not to, she called 911 using her cell phone. She stated that the police arrived in a quick "five minutes." The Respondent did not attempt to stop her from calling 911, claiming that she thought that the Respondent believed that she was just threatening her with calling 911.

[REDACTED] was asked if she fell down after the Respondent pushed her and she replied, "Yeah, because I was taken off guard I didn't know she was going to do that." After being pushed to the floor she stated that she left the room and stayed in the living room crying and took the Respondent's keys and hid them. [REDACTED] then left the room to talk to [REDACTED] and stated that the Respondent was looking for her keys and asked her where they were. [REDACTED] told the Respondent that she took her keys and was not giving them to her because she had been drinking. [REDACTED] stated that she wanted the Respondent to go back to bed but the Respondent refused, stating that she was already awake. [REDACTED] claimed that when she assured the Respondent that she wouldn't talk to her anymore, the Respondent, "to get me out of her way she grabbed me by my hair and pulled me, dragged me." She stated that when the Respondent grabbed her by the hair she fell and the Respondent was pulling her causing her to lose "a lot of hair." She stated that the Respondent grabbed her with "both hands from behind." When asked if she was falling at that point she stated "yeah, cause I was facing her and she went and grabbed me with both hands and I fell down this way and then like she was dragging me, I trying (sic)

to get her off of me." She stated that the Respondent dragged her for about five to six feet and then she let her go.

[REDACTED] said that at that point she just went back to the door to sit there and she started to cry and the Respondent again asked her for her keys and told her that she was leaving because there was no way that they could work this out. [REDACTED] further explained that she took the Respondent's keys because she was afraid for her to drive and that she knew she was going to get in the car and drive away. [REDACTED] stated that there were four or five other times when the Respondent had too much to drink and had operated a motor vehicle. She stated that the Respondent is usually out with friends when this happens and that is when she will drive herself. When she is with the Respondent she usually is the designated driver.

When [REDACTED] was asked what happened at the point before the police arrived she stated, "she was just taking my clothes and throwing them at me and I was just sitting there and she kept on throwing all my things at me and I was just sitting there and she kept throwing all my things at me. Between all of that I think the slap was after my hair being pulled and I don't know why that happened, all I remember was getting a slap in my face and I just remember her going into the room and taking all my clothes and throwing them at me."

[REDACTED] was then asked by investigators if she told the responding police officer that she was not only pushed but her hair was pulled and she was punched she stated, "I didn't tell them that my hair was pulled and I wasn't punched I was slapped. I told him that she did slap me; I don't remember telling him that my hair was pulled. I did tell him that she did push me." When it was pointed out by the investigator during the interview

that she was holding her wrist and was asked if she wanted for them to call an ambulance, she said that she did. When asked how she hurt her wrist she stated, "I don't know how or where, I know that I, I think it was she, when she had pushed me in the bedroom.

Police Officer Mildred Velez

Velez is an eight-year member of the Department assigned to anti crime in the 1 Precinct. Velez acknowledged that on July 21, 2008, she went to [REDACTED] [REDACTED] for a dinner party. She stated that those present at the dinner was [REDACTED] [REDACTED], the Respondent, [REDACTED] and [REDACTED] [REDACTED]. She stated that she has known the Respondent for approximately one and a half years and that the dinner was at the Respondent's home. She also knew [REDACTED] and has met her approximately 20 times. She described the relationship between the Respondent and [REDACTED] as "domestic partners."

Velez testified that she arrived at the apartment at approximately 7:00 p.m. and started cooking. She described the apartment as an open floor plan with a small galley kitchen with a combined living room where there was an eating area. She described the conversation between [REDACTED] and the Respondent as "very friendly." She added that "we finished having dinner, and Ms. [REDACTED] and [REDACTED] [REDACTED] go into the bedroom, and myself, and [REDACTED] [REDACTED] and Sergeant Portalatin stay on the couch watching T.V." She stated that [REDACTED] and [REDACTED] decided to go to bed at around 10:00 that evening. Velez left the premises at approximately 11:30 p.m. She was prompted to leave because the Respondent was falling asleep on the couch and at that point they told the Respondent they were leaving, closing the door behind them. As they

were leaving the Respondent acknowledged them leaving in that "she just nodded and stood on the couch." The following day, July 22, 2008, she recalled speaking to the Respondent it was approximately 3:00 or 4:00 in the morning. She was not sure if the Respondent had text messaged her or actually called her. She stated that the Respondent "basically indicated that she was at a precinct and that Ms. [REDACTED] had got her jammed up." Velez was surprised because she wouldn't have expected anything like that to happen because the interaction that she saw between S [REDACTED] and the Respondent was "very friendly, very social."

Velez stated that she saw [REDACTED] again days later when she was invited out to lunch with [REDACTED] [REDACTED]. She stated that [REDACTED], Ms. [REDACTED] and [REDACTED] attended the luncheon. When Velez arrived at the luncheon, she noticed that "there was a cast on her [REDACTED] s arm." She believed it was [REDACTED]'s right arm. She described the area as "just the small wrist area. I would say the wrist and the hand area." Velez stated that she did not ask [REDACTED] what was going on or why she had the cast on her arm. She stated that [REDACTED] did indicate what transpired between the Respondent and her stating "she wasn't too clear. She started crying, but she basically explained that she was involved in an altercation with Sergeant Portalatin. I couldn't really understand because she was crying. When asked how the injury occurred she stated that [REDACTED] described it "vaguely. While she was crying, she said she was pushed by a pillow." She stated that it was the Respondent that pushed her. She described [REDACTED] as "very small, petite, fragile."

On cross examination, Velez described the Respondent's apartment as a small place approximately 240 square feet. She said while you could hear the television from

the kitchen you could not hear it from the bedroom. Velez denied any knowledge of any past incidents between the Respondent and [REDACTED] including domestic incidents. She also denied knowing of any incidents of violence or allegations of violence between the two. When asked if they had a good relationship she replied, "Yes." Velez stated that she wasn't present when any of the alleged acts took place during that evening and the Respondent never admitted to her that she caused any injury to [REDACTED]. When asked to explain what she meant when [REDACTED] told her that she was pushed by a pillow, reminding her that a pillow can't push anyone Velez stated, "What I understood from her when she told me that was that Sergeant Portalatin and [REDACTED] were involved in a pushing match. That was the conclusion I came with."

When Velez was asked if [REDACTED] got hit with anything other than a pillow she said, "just a pillow." When she was reminded that during her Official Department interview on November 9, 2008, she was asked, "Do you remember being asked this question and giving this answer: So you meet her there, and what did she tell you? Velez answered, "she told me she was sitting on the couch. [REDACTED] came out of the room and they got into a shoving match and she hit her with a coat hanger." Velez did not recall giving that answer but agreed, "If that's what's it says on paper, yeah." The only thing that she remembered was that a pillow was used. Velez stated that [REDACTED] never indicated to her that she jumped on the Respondent's back to try and keep her in the apartment. While Velez saw the cast on [REDACTED]'s arm she did not know what her injury was.

Sergeant Arthur Beal

Beal is a 12 year member of the Department currently assigned to Manhattan North Investigations Unit. He testified that on July 22, 2008, he received a call out notification from the midnight duty captain. The duty captain stated that there was an arrest earlier that night and that it was an off-duty member of the service concerning allegations of an assault. He said the member of service was the Respondent. He further explained that it was a domestic incident involving the Respondent and her girlfriend.

Beal stated that he spoke with [REDACTED] on the morning of the incident when she was interviewed by a group of investigators. He could not recall if she was transported to his unit by the duty captain or if she had a friend accompany her. He stated that [REDACTED] complained about an injury to her right hand, and she also complained of injuries to her head from having her hair pulled. When asked if [REDACTED] brought any of the hair he stated, "there was hair. I believe there was hair at the scene, and I think that the duty captain might have grabbed that. I don't recall how the evidence was grabbed." When asked the name of the duty captain he replied, "Captain Arniotes." When [REDACTED] complained about the injury to her right hand Beal called an ambulance to the precinct and they transferred her to the hospital for evaluation. Beal and the duty captain accompanied [REDACTED] to [REDACTED] Hospital where she was brought into the emergency room.

Beal testified that at one point [REDACTED] had x-rays done and then came back to the room where Beal was waiting. Beal stated that the doctor came to where they were waiting and told them "she had fractured her right pinky finger. He named the bone, but I don't recall the name of the specific bone." While Beal was not sure of the exact

treatment that [REDACTED] received he stated that he believed that the injury was placed in a splint before they left.

Beal further testified that [REDACTED] indicated that "she was thrown to the ground" by the Respondent. When she was thrown to the ground, she went to stop her fall, and that's how she injured herself." When questioned by the Court, if [REDACTED] was trying to block her fall, Beal stated that, "it was the combination of her hand hitting whatever her hand hit that caused the injury."

On cross examination, Beal stated that he is basing his testimony on what [REDACTED] told him and the injury that the doctor stated that she had. When Beal was asked if he saw any visible injuries when he first saw her he stated, "Well, she pulled her hair apart where she said she had her hair pulled and there was redness, redness in the scalp. She separated her hair and this is where it is hurting." He denied seeing that her scalp indicated that a patch of hair was missing. He acknowledged that [REDACTED] actually had to pick through her hair or separate her hair for him to see some redness. He stated that he was shown the redness when "she was in our office just before we were interviewing her. When she was complaining about the injuries." Beal acknowledged that aside from the redness to her scalp, he did not see visible injuries to [REDACTED]. While Beal saw the hair and believed it came from the apartment and that it was brought by the duty captain he is not sure where it came from. When he first saw the hair was not yet vouchered but it was in an envelope. He reiterated that he did not know how the hair was recovered from the apartment to his office. He denied having any test done to determine whether if it was in fact [REDACTED]'s hair. Nor did he have any evidence that he could present that could definitively state that the hair was [REDACTED]'s.

When Beal was asked if he knew the results of the criminal case in this matter, he stated, "I believe the complainant never filed charges or dropped the case or something."

Sergeant Albert Rivera

Rivera is a 17-year member of the Department, currently assigned to Transit Bureau Investigations Unit. He stated that he became familiar with the Respondent through a misconduct case that was filtered out from the Internal Affairs Bureau. He said prior to him receiving the case, the Manhattan North Investigations Unit (MNIU) had the initial call out. He stated that the nature of the allegation of misconduct against the Respondent was a domestic incident.

After receiving the case from MNIU, the steps that his investigation took was to re-interview all of the parties that were involved and handle the background checks of the police officers and the sergeant and the victims involved. He stated that he believed the domestic partner's name was Ms. [REDACTED]. When asked if he had an occasion to speak with [REDACTED] he said "I did call her, however, she refused to cooperate and tell me what happened." Rivera stated that the incident occurred inside the residence of the Respondent. The duty captain that evening was Captain Arniotes and Arniotes told him that he went to interview the complainant and she gave him a clump of hair. Rivera testified that Arniotes told him that "that was hair that was pulled out of her ([REDACTED]'s) head by Sergeant Portalatin." Rivera knew that the captain vouchered the property because "during the course of the investigation we got copies of all the documents and paper work that was prepared on the day of the incident. I saw a voucher that was prepared for the property. Rivera then looked at a Department Exhibit 2A (DX2A) and

identified it as a photocopy of a photograph of a clump of hair that was taken on the day of the incident. When asked by the Court, what the actual chain of custody of the actual hair was, Rivera stated that he was informed by Captain Arniotes that he received the item from Salcedo and he had it vouchered. Rivera made it clear that Arniotes told him that Salcedo physically gave him the hair.

Rivera further testified that he could not definitively state who's hair it was nor did he do any testing on the hair to determine that it was [REDACTED]'s hair. He was basing his knowledge that it was [REDACTED]'s hair based on what the Arniotes had told him. He acknowledged that the captain no longer works for the Department.

He reiterated that he attempted to interview [REDACTED] and when he spoke to her she said she did not want to speak about the incident; that it was in the past and she wanted to move on with her life.

On cross examination, Rivera stated that he was in contact with the New York District Attorney Office and the status of the Respondent's case "was dismissed.... because of an uncooperative complainant." He acknowledged that he was further told by the Assistant District Attorney that they would not be able to prove their case without the complainant.

Sergeant Michael Lodato

Lodato is a seven year member of the Department currently assigned to the 32 Precinct. On July 22, 2008, he was the patrol supervisor and at one point responded to [REDACTED] [REDACTED] pursuant to a radio run of an assault in progress. He said the radio communication came in at about 3:00 o'clock in the morning and he arrived at [REDACTED] [REDACTED] at about 3:15 a.m. When he arrived at the location he spoke to responding

officers and was told that there was a dispute involving a member of service. He stated that he asked the female that was standing in the kitchen if she was a member of the service and she stated, "Yes." He then asked for identification and she produced her Department ID card indicating that she was an NYPD sergeant whose name was Portalatin. At the time there were two other females in the apartment on the couch in the living room. He stated that the Respondent's demeanor was that she looked upset and when he asked her what happened, she told him that she and "the other female inside the apartment got into an argument, I don't know what it was about. One of them grabbed a set of keys because the other one wanted to leave. I'm not sure which one grabbed the keys and wanted to leave she stated that she had pushed her... the sergeant had pushed the complainant and the complainant fell to the ground." When questioned by the Court as to who said the sergeant pushed her he stated, "the sergeant [Respondent] told me,"

Lodato indicated that the Respondent never told him that she acted in self defense or told him who the aggressor was. At one point Lodato approached [REDACTED] and stated that she was sitting on the couch and that she looked upset and that she had been crying. He described her as being thin and short. He stated that [REDACTED] "indicated that there was a dinner party there and their friends had left, and that her and the sergeant had gotten into an argument and that she [REDACTED] was pushed to the floor" by the Respondent. When Ladato was asked if [REDACTED] was complaining of any injuries he stated, "she was holding her wrist. I asked her if she was injured. She said that her wrist had hurt. I asked her if she needed medical attention. She said 'no.' I asked her if she needed an ambulance several times, she said, 'no.'" Prior to leaving the apartment Lodato noticed that there was a pile of clothing against the door.

On cross examination, Lodato reiterated that the argument was over one of them wanting to leave apartment. When asked which one wanted to leave he replied, "The other one who didn't want to leave grabbed the set of keys, and that's when an argument ensued and she (the Respondent) said she pushed the complainant and she fell." Lodato did not recall the Respondent saying that she pushed [REDACTED] off her back. He denied that [REDACTED] ever told him that the Respondent dragged her across the apartment by her hair. He testified that the Respondent did not appear intoxicated and that she was fit for duty complying with all of his orders and answering all questions that he had asked of her.

#### The Respondent's Case

The Respondent offered the out-of court 911 CD from the incident as evidence (Respondent's Exhibit ("RX") A and testified in her own behalf.

#### The Respondent

The Respondent is a seven year member of the Department assigned to Transit District 12. She testified that on July 22, 2008, she had a few friends over for dinner including her girlfriend [REDACTED]. At that time, she was dating [REDACTED] for approximately two years. She also stated that there were approximately five people at the dinner party, [REDACTED], [REDACTED], [REDACTED] and [REDACTED], along with [REDACTED] and the Respondent. There was no particular theme to the party, they were just going to watch a movie, have dinner and play video games.

The alcohol that was served at the dinner was a bottle of [REDACTED] and the Respondent stated that she had a glass and a half of the wine. She denied being intoxicated that night, nor was anyone intoxicated that evening.

While playing video games the Respondent noticed that [REDACTED] and [REDACTED] were tired and she told them they could go into the bedroom and go to sleep because they were falling asleep on the couch. She stated that her apartment is a one bedroom condo that she has owned for approximately two years. It was approximately 10:00 or 11:00 p.m. when she told them to go to sleep.

At one point while watching television, the Respondent fell asleep on the couch; the time was approximately 12:00 or 1:00 a.m. She did not go to bed to sleep because [REDACTED] and [REDACTED] were in the bedroom and she did not think it was appropriate to go into the bedroom at that time. The next thing she remembered was that [REDACTED] was standing over her punching her in her neck and upper shoulder. The Respondent woke up and asked [REDACTED] something to the effect "what her problem was." She stated that [REDACTED] then asked her why she had not told her that her friends left. [REDACTED] also asked her "why she left the TV on and why there was a mess in the kitchen." The Respondent stated that at that point she "got up and I put my shoes on because I didn't have my shoes on. I fell asleep with my clothes, so I put my shoes on and I told her I was going to leave. I went to go where I usually place my keys and phone, and they weren't there. I asked her where my keys were, and she told me I wasn't going anywhere." The Respondent stated that she did not want the argument to escalate and she just wanted to leave the apartment.

The Respondent went into the closet to look for her keys and cell phone and decided she did not need the keys; she had a metro card so she decided that she was just going to leave. At that point [REDACTED] "blocked the door. I tried to open it, she blocked it. We went back and forth with that for I don't know how long. I didn't want to make too much noise because [REDACTED] was sleeping in the room... I went back into the closet to find my keys again. I'm not really sure. But she climbed on my back. She is a little smaller than me, so when she climbed on my back she was kind of choking me, so I shrugged her off my back. I said if she didn't want me to leave, she can leave. I went into the bedroom and I opened the closet door and started to take her things out of the closets and place it by the door."

The Respondent acknowledged that [REDACTED] jumped on her back, "piggyback" style and due to [REDACTED] being smaller in size was choking her. The Respondent in an effort to get her off her back said that she "stepped back a few times and I shrugged her off of me." The Respondent stated that [REDACTED] stumbled but she did not go down to the floor. The Respondent then told [REDACTED] that if she did not want her to leave then [REDACTED] could leave. The Respondent then went into the bedroom opened the closet door and removed her things from the closet and placed them by the door. She stated that she did not throw them on the floor; actually she placed them by the door. The Respondent stated that [REDACTED] then told her that "if I didn't stop that she would call the police, and I told her to please call the police."

The Respondent stated that when she tried to get out of the apartment, [REDACTED] placed "her whole body in front of the knob so I really couldn't get it. I was just trying to get my hand in to get it. She had all the latches closed." The Respondent denied striking

or punching or kicking [REDACTED], nor did she grab her by the hair or drag her around the apartment. She stated that she also did not have any intent on causing [REDACTED] physical injury.

After the Respondent told [REDACTED] to call the police, [REDACTED] called 911 and the Respondent heard her talking to the police because she was standing right in front of her when she made the call. The Respondent stated that when [REDACTED] was talking to the 911 operator she was using a lot of police language. She said she was "involved in a domestic. I was a Sergeant in District 12..."

When the police arrived, the Respondent identified herself as a police officer and told them that her girlfriend had called the police because she had asked her to. She stated that at that point the responding officers stopped talking to her and went to talk to [REDACTED]. The Respondent did not hear any of the conversation between the police and [REDACTED].

When Lodato asked her what happened, she remembered telling him, "I was asleep on the couch, I had fell (sic) asleep, and that my girlfriend at the time had punched me in the neck to get me up. I told him that I pushed her off my back. He asked me, you know, he asked me, he said she states that you pushed her. And I said I pushed her off my back, you know. I was trying to...I told him I was trying to get out of the apartment, and she had taken my keys and my phone." The Respondent indicated that when [REDACTED] was on her back she arched her back to, "just to get her off my back." The Respondent stated that at one point she was arrested for what she believed was an assault, she was arraigned on those charges and ultimately those criminal charges were dismissed.

On cross examination, the Respondent testified that during the course of the evening [REDACTED] never complained to her about an injury to her hand. The Respondent did not know when her friends left the dinner party even though Velez testified that they had awakened her and told her that they were leaving. She stated that when she was awakened it was by [REDACTED] who told her that her friends had left. The Respondent further explained how [REDACTED] woke her up by stating, "I was asleep with my head towards the door, and she was over me and she was just thrusting her fist towards my neck and my shoulder really hard. I asked her what her problem was." After the Respondent asked her that question, they argued and [REDACTED] would not let the Respondent leave and hid her cell phone and keys to her house and car. The Respondent added that at the time that [REDACTED] was punching her she did not call the police because she did not feel the need to get the police involved.

The Respondent with regards to her keys explained that, "usually my keys are at a certain...right on the counter, in the house. I keep them there all the time. So when I couldn't find them, I turned to her, and she was like you are not going anywhere. I said alright." She stated that once [REDACTED] stated that she wasn't going anywhere she then believed that it was [REDACTED] who took her keys. The Respondent was then asked at what point did [REDACTED] jump on her back and she replied, "I went into the closet because when you walk into the apartment there is a closet here that you open the doors and put the coats in.... So I went into the closet to see if I could find my keys. That's when she jumped on my back, my neck went up and I just shrugged her off of me. The kitchen counter right behind her. I am facing the closet, looking into the closet to see if I find my keys and my phone." When asked by the Court to basically describe the closet the

Respondent stated, "little shelves, then the hangers for your coats and stuff. I am looking through the shelves to see if I see the keys and my phone, at which time she just climbs on my back. I thought the keys might have been in there, that's why she climbed on my back. My neck went back and I shrugged her off of me. My neck went back and I raised my arms to get her off my back. (The Court then described what the movements of the Respondent was during her testimony as the following; "The Respondent is standing straight and explaining what went on. She is indicating the complainant put her arms around her neck and she is indicating by her head going backwards and at the same time, you are raising your arms. The Respondent is now throwing both arms backwards indicating that's how she, according to the testimony, how she removed the complainant from her back.")

The Respondent was then asked if she heard [REDACTED] fall and she said that she did not see her fall. She explained "I moved forward, then I turned around, and she was kind of stumbling, but she was still on her feet. I don't believe she fell." She further explained that there is a kitchen island that was behind her and [REDACTED] "might have gone into the island." The Respondent however, did not know if that's exactly what happened. The Respondent stated that it was at that point where she turned around and told [REDACTED] that since she did not want her to leave then [REDACTED] could leave. The Respondent then went into another room and gathered [REDACTED]'s belongings and placed them on the floor. [REDACTED] then told her "if I didn't stop taking her belongings out of the closet she would call the police, at which time I said please call the police, call the police please."

The Respondent then testified that, "after I had pretty much taken all of her things out, she said it again, if you don't stop, I am going to call the police. I said please call the police. I want you to call the police."

The Respondent stated that during this time [REDACTED] never complained about her wrist hurting her. It was only hours later that the Respondent learned that [REDACTED] was taken to the hospital for an injury to her pinky finger.

The Respondent stated that the only time she touched [REDACTED] was to get her off of her back. She further denied ever pulling [REDACTED]'s hair or throwing her to the ground. The Respondent stated that after the incident, [REDACTED] tried to contact her numerous times but the Respondent refused to speak to her.

#### FINDINGS AND ANALYSIS

The Respondent is charged with causing physical injury to [REDACTED]. I find the Respondent Not Guilty because the Respondent's testimony persuaded this Court that her version is more credible than the version presented through [REDACTED]'s hearsay statements.

There were no witnesses to this incident. This Court must therefore weigh the uncorroborated hearsay statements of [REDACTED] against the Respondent's in-Court testimony.

[REDACTED] told the 911 operator that the Respondent was throwing things at her and was hitting her; that she was taking her stuff out of the closet and throwing them into the living room. She also mentioned that the Respondent knew she was on the telephone with 911.

When the police arrived at the apartment [REDACTED] told Sergeant Lodato that she and the Respondent got into an argument and the Respondent pushed her to the floor. She was holding her wrist and told Lodato that it hurt but refused medical treatment at that time. Lodato pointed out that [REDACTED] never told him that the Respondent dragged her across the apartment floor by her hair. She also did not hand him hair that she later claimed the Respondent ripped from her head. Lodato also noticed that clothes were piled up against the door.

During her interview with Department investigators [REDACTED] spoke in more detail about what she claimed the Respondent did. She initially stated that she woke the Respondent up, who was sleeping on the couch, and told her to go to bed because she wanted to watch television. It appears to this Court that [REDACTED]'s statements indicate that she was somewhat aggressive towards the Respondent who she had just awakened from her sleep. This is evidenced by how she began to question her as to when the "other girls left." And when the Respondent "dismissed my question" and turned away [REDACTED] stated that she began to question her as to whether she had a good time and was told by the Respondent to leave her alone. [REDACTED]'s response was "I'm like just go to the room I am not ready for bed right now."

[REDACTED] was again sounding aggressive when she told investigators that as the Respondent walked into the room [REDACTED] heard her say something which she could not remember and [REDACTED] "went after her and I asked 'why is she being so mean, why is she treating me this way...'" [REDACTED] then accused the Respondent of telling her to "'shut the fuck up, leave me alone, I don't want to talk to you...'" [REDACTED] appears to have kept up her aggressive behavior where she told investigators, "I kept on asking her but why are

you doing this and she got up and pushed me and so I went into the living room and I was crying but I took her keys cause I know she was drinking the night before; when we argued." [REDACTED] stated that she hid the keys because she claims that in the past the Respondent "always wants to drive off whenever we get into an argument and she just got upset because she couldn't find her keys." While [REDACTED] told investigators that the Respondent, [REDACTED] and [REDACTED] had been drinking sangria or white wine she could not say if the Respondent was intoxicated because she went to bed before 10:00, 10:30 and got up at 2:30 a.m. when the Respondent was sleeping on the couch.

[REDACTED] then told of how the Respondent just wanted [REDACTED] to leave her alone and wanted her keys. [REDACTED] claimed that she was willing to leave the Respondent alone and just wanted her to go to sleep. She further offered that after the Respondent said she was "worthless" she grabbed her by her hair and pulled her across the room. According to [REDACTED], the Respondent then went to the bathroom and [REDACTED] "walked back to the door you know to sit in front of the door..." [REDACTED] then claims that she did not "know how it happened or what was said and I, she slapped me and I remember her slapping me in the face."

She further told investigators that while she was sitting on the floor by the door the Respondent took "all my stuff out of the closet and threw it in front of the door and she left the clothes on the hanger and she threw it, she was throwing it on top of me so the hangers hit me." It was at that point that [REDACTED] told the Respondent that she would call the "cops" if "you throw something at me one more time." [REDACTED] claimed that the Respondent continued to throw the clothes by the door at which point [REDACTED] called 911. She stated that the Respondent did not attempt to stop her from calling the police.

Upon further questioning by investigators, [REDACTED] stated that she fell down when the Respondent pushed her because she "was taken off guard [and] didn't know she was going to do that." She told investigators that the Respondent wanted to get her out of the way and "she grabbed me by my hair [from behind with both hands] and pulled me, dragged me" causing her to lose "a lot of hair." According to [REDACTED], she fell down and the Respondent dragged her for five to six feet and then let her go.

[REDACTED] admitted to not telling the responding officers about the Respondent pulling her hair, but did tell them that she was pushed and slapped by the Respondent.

[REDACTED] was asked of any prior incidents that she had with the Respondent. She told them of other incidents but this Court views those statements as mere allegations without any support of concrete evidence. She did not report any of those alleged incidents, there were no witnesses and no medical treatment where she claimed physical contact. More importantly, the Respondent was not charged with any of those incidents in this case.

[REDACTED] expressed concern about the Respondent's drinking and driving yet she could not say if the Respondent was intoxicated. Moreover, Lodato testified that he found the Respondent fit for duty when he arrived at the apartment and noted that she complied with all of his orders and answered all of his questions.

The Respondent testified that she fell asleep on the couch at about 1:00 a.m. The next thing she remembered was that [REDACTED] was aggressively waking her up by punching her in the neck and upper shoulder. When she asked [REDACTED] "what her problem was" [REDACTED] complained as to why she was not told that her friends had left and why the TV was left on and why was there a mess in the kitchen. At that point,

according to the Respondent, she decided she was going to leave the premises because she did not want to escalate the argument. When she went to look for her keys and cell phone, however [REDACTED] told her she was not going anywhere and locked the door. As the Respondent was looking in the closet for her keys and phone she testified that [REDACTED] climbed onto her back and was choking her. The Respondent then lifted her shoulders and "shrugged" [REDACTED] off of her back. The Respondent did not believe [REDACTED] fell to the floor, but may have fallen into the kitchen counter.

Up to this point, the two versions of what occurred are somewhat similar. [REDACTED] aggressively woke the Respondent up, insisted on asking her questions and the Respondent making it clear that she did not want to escalate the argument. The two versions are also similar where the Respondent pushes [REDACTED], possibly to the floor. [REDACTED]'s version is that the Respondent pushed her for no reason while the Respondent testified that she was attempting to free [REDACTED] from her back.

What is noteworthy from the evidence is that during the dinner party and prior to going to sleep the Respondent did not show any animosity towards [REDACTED]. Velez testified that the conversation between [REDACTED] and the Respondent was "very friendly." It is therefore difficult for this Court to believe that the Respondent was determined to intentionally and without provocation harm [REDACTED]. It is more credible that the Respondent wanted to get away from a person who was acting aggressively towards her, particularly someone who jumped on her back and started choking her. In the process of being removed from the Respondent's back [REDACTED]'s wrist was injured. This Court finds that the Respondent's actions were not a wrongful or intentional act to harm [REDACTED]. It was more in line with an act of self defense.

[REDACTED] further claimed that she was smacked by the Respondent and pulled by her hair across the floor. The Respondent denied doing any of this.

In finding the Respondent more credible than [REDACTED] it is important to note several problems with [REDACTED]'s version of events. [REDACTED] made no mention of the alleged hair pulling to the responding officers or to Lodato. This is difficult for this Court to understand considering that she claimed that she was dragged across the floor by her hair and had a clump of her hair pulled from her scalp.

Beal testified that he was not sure how the hair was recovered. He stated that there was hair at the scene and at first stated that he thought the duty captain, Arniotes, may have "grabbed" it but then stated that he did not recall how it was recovered. Rivera testified that he was informed by Arniotes that when he went to interview [REDACTED] she physically gave the hair to him. When Beal first saw the hair it was in an envelope and was not yet vouchered. He was not able to say for certain whose hair it was because he was not sure how it was recovered and he did not conduct any tests to determine who the hair came from.

In addition, when Beal looked at [REDACTED]'s head "she pulled her hair apart where she said she had her hair pulled and there was redness...in the scalp. He denied seeing that her scalp showed where a patch of hair was missing. He noted that she had to actually pick through her hair or separate her hair for him to see some redness.

Despite these problems this Court admitted a photocopy of the picture of her hair into evidence but it carries little weight or probative value. This is because there is no reliable evidence as to how the hair was recovered, no one witnessed the event and there were no tests to establish whose hair it was.

The fact that [REDACTED] called 911 and never mentioned that a clump of hair was pulled from her head, raises further suspicions about such a claim. Indeed, in that 911 call the only reference to physical contact was when [REDACTED] stated "she's hitting me" and when the operator asked her if the Respondent physically touched her she replied "yes."

What the Respondent also complained about in that 911 call was the fact that the Respondent was allegedly throwing clothes at her. Indeed, according to her statements, [REDACTED] made it clear to the Respondent that if the Respondent did not stop throwing her clothes at the door and at her she would call 911. As is clear in the 911 call itself and [REDACTED]'s statements, the Respondent made no effort to stop [REDACTED] from making the call because the Respondent apparently did not believe she did anything wrong.

While the Respondent's belief are not controlling, her actions regarding the phone call coupled with the fact that [REDACTED] did not mention the serious allegations involving her hair and wrist tend to support the Respondent's version of events.

Considering the 911 call along with the hearsay statements of [REDACTED] and the testimony of the Respondent who was present in court and subject to cross examination, this Court concludes that the Department has failed to meet it's burden by a preponderance of the credible evidence.

Based on the foregoing, I find the Respondent Not Guilty.



Respectfully submitted,  
  
John Grappone  
Assistant Deputy Commissioner Trials